

Small Business Economic Impact Statement
Proposed Amendments to
Communicable and Certain Other Disease {Chapter 246-100 WAC}
Powers and Duties of Local Health Officers {WAC 246-101-505}

Required Under the Regulatory Fairness Act (RCW 19.85.030)

Purpose and Objective

The Board of Health (BOH) is proposing rule changes that would clarify the enforceability of isolation and quarantine orders issued by local health officers and establish due process protections for persons and groups subject to isolation and quarantine.

The rule change would:

- Add new sections to chapter 246-100 WAC, Communicable and Certain Other Diseases to establish procedures for isolation and quarantine.
- Add a new section to chapter 246-100 WAC referencing existing statutory requirements to enforce the orders of a local health officer.
- Edit existing sections of chapter 246-100 WAC and chapter 246-101 WAC, Notifiable Conditions to remove specific mention of instituting isolation, quarantine, and other disease control measures, and replacing them with a reference to the provisions of the new sections in chapter 246-100 WAC.
- Make additions and revisions to the definitions section of chapter 246-100 WAC to support the new provisions.

Rulemaking Requirements of the Regulatory Fairness Act (RCW 19.85)

The Regulatory Fairness Act, RCW 19.85.030 requires the Board to conduct a Small Business Economic Impact Statement (SBEIS) for proposed rules that have more than minor impact on small businesses. As defined in RCW 19.85.020 a small business is “any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.”

A Small Business Economic Impact Statement was not done. For the following reasons, the proposed rules would not have more than minor impact on small businesses:

- The enforcement provisions do not create any new authorities or responsibilities. They consolidate by reference the authorities and penalty provisions that already exist in various statutes. RCW 70.05.120 requires that the public comply with the orders of boards of health and local health officers, and RCW 43.20.050(4) requires that law enforcement officers enforce all State Board of Health rules. Failure to do so, in both instances, is a misdemeanor. Since these authorities,

responsibilities, and penalties already exist, referencing them in rule will have no new impact on small businesses.

- The imposition of isolation and quarantine on individuals or groups could have a financial impact on small businesses. Possible examples include: (1) an essential employee is quarantined not able to attend a critical meeting; (2) a small hotel is commandeered as a quarantine facility and closed to paying guests; (3) a small hospital is delegated as a receiving facility for persons exposed to smallpox and loses future patients because of fears of contamination; (4) a commercial facility is closed because it might be contaminated with an infectious agent such as anthrax. As real as these potential costs may be, however, protecting the public health is recognized as one of the fundamental duties of local governments, and Washington law already grants broad authority to local boards of health (RCW 70.05.060) and local health officers (RCW 70.05.070) to institute emergency control measures. The courts have repeatedly held that these public health statutes should be interpreted broadly. The proposed rule revision would not create any new authorities, and hence would not impose any new costs on small businesses. Instead, they would mitigate existing authorities by establishing protections against unreasonable and unconstitutional detention.
- Establishing procedures for isolation and quarantine that might impede the ability of local health officials to establish isolation and quarantine (for example, by making them spend more time in court and less time in the field combating the outbreak) could conceivably increase morbidity and mortality associated with a bioterrorist attack or disease outbreak. Increased morbidity and mortality could, in turn, hurt small businesses. During a May 2000 federal field exercise involving top federal officials (TOPOFF), however, the theoretical release of aerosolized plague bacilli over Denver quickly overwhelmed the public health and medical systems. One of the problems identified in TOPOFF was the lack of clear procedures for isolation and quarantines. Federal officials have been promoting the modernization of state isolation and quarantine laws so that they incorporate due process protections and are not disease-specific. The Centers for Disease Control and Prevention included efforts to modernizing public health laws, including isolation and quarantine laws, in its grant guidelines for the recently awarded bioterrorism preparedness funds. Based on the best information currently available, establishing due process procedures for isolation and quarantine should *improve* public health response in an emergency and *reduce* morbidity and mortality.